

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

KEVIN LEA	§	
v.	§	CIVIL ACTION NO. 5:09cv34
S. GESSLEMAN, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Kevin Lea, proceeding *pro se*, filed this lawsuit under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), complaining of alleged violations of his legal rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. In his original complaint, Lea named physician’s assistants S. Gessleman and B. Stuart, FCI-Texarkana medical administrator V. Simien, and nurses M. Rostollan and G. Allen. He later amended his complaint to add the United States as a defendant, raising a claim under the Federal Tort Claims Act (FTCA). The individual defendants have been dismissed, leaving only Lea’s claims against the United States under the FTCA. The United States filed a motion for summary judgment regarding the claims under the FTCA.

Lea complained of the medical care he received while confined in Texarkana. He filed an expert report from a physician named Dr. Andrew Sugantharaj, M.D.; however, this expert report conceded that “with a positive final outcome, I am not able to determine any deviation from the accepted standard of medical care in this specific case.” Because state law controls the liability for medical malpractice under the FTCA, a federal prisoner in Texas raising such a claim must show the

physician's duty to act according to an applicable standard of care, a breach of that standard of care, injury, and causation. Quijano v. United States, 325 F.3d 564, 567 (5th Cir. 2003).

After reviewing the evidence and records in the case, including the statement from Lea's expert as well as other records in the case, the Magistrate Judge issued a Report on August 23, 2010, recommending that the motion for summary judgment filed by the United States be granted and that Lea's claims under the FTCA be dismissed. A copy of this Report was sent to Lea at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and documents in this case, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly


ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the motion by the United States for summary judgment (docket no. 61) be GRANTED and that the Plaintiff's claims under the Federal Tort Claims Act be dismissed with prejudice. It is further

ORDERED that, inasmuch as the claims under the Federal Tort Claims Act are the only remaining claims in the case, this lawsuit is hereby DISMISSED with prejudice in its entirety. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 27th day of September, 2010.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE